

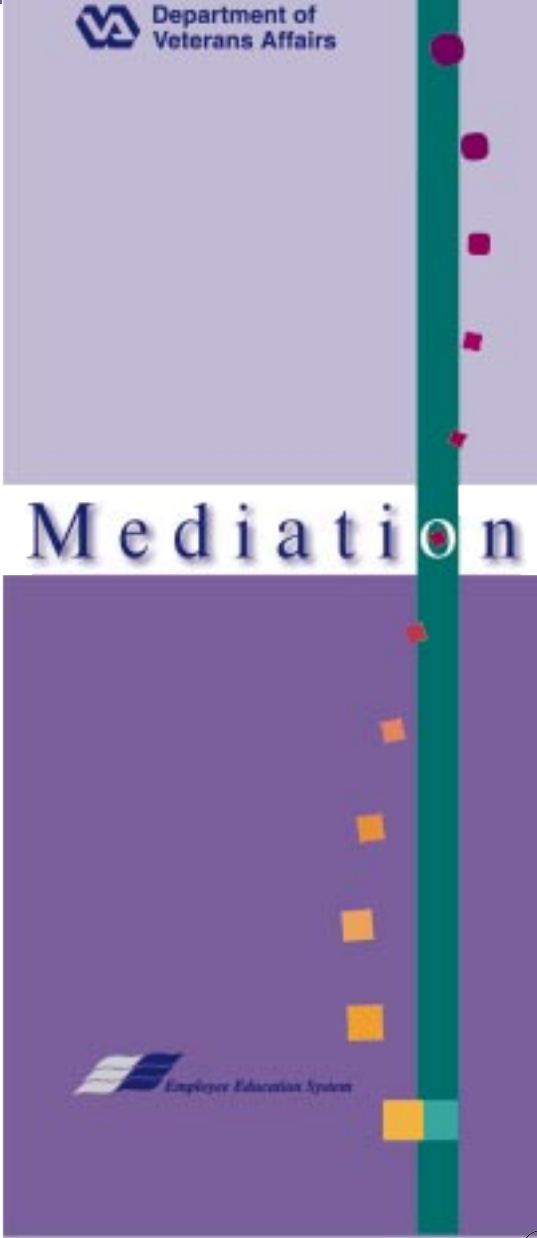
Are Mediation and Alternative Dispute Resolution the Same?

Alternative Dispute Resolution, often referred to simply as ADR, is an umbrella phrase used to describe a variety of problem solving methods or techniques. These methods include, among others, negotiation, mediation, settlement conferences, mini-trials, arbitration, and litigation. So, you see, mediation is just one form of ADR. While negotiation and mediation are the least intrusive ways to resolve a dispute, arbitration and litigation hand the decision-making power over to an arbitrator or judge and are much more expensive and time consuming processes.

For more information on Mediation contact:

- ◆ Labor/management partnership,
- ◆ EEO Manager
- ◆ Regional Counsel,
- ◆ Union representative,
- ◆ ADR Coordinator,
- ◆ Human Resources Management Service, or,
- ◆ Office of Resolution Management
- ◆ Local contact (see below).

Web site address: <http://vawwww.lrn.va.gov>



What Is Mediation?

Mediation is a process that can be used to resolve problems between individuals or groups. In this process, an impartial person, referred to as a neutral or mediator, helps facilitate communication between disagreeing parties. During a private and confidential meeting, the mediator helps the parties discuss their disagreement, identify the real issues, and explore options to create a voluntary, mutually agreeable solution.

Mediation is recommended when

- ◆ the dispute needs to be resolved very quickly.
- ◆ the parties want to preserve their working relationship.
- ◆ there is need for confidentiality or privacy.
- ◆ the parties want to terminate their relationship in the least adversarial way.
- ◆ multiple issues are involved.
- ◆ there is a need to save money.
- ◆ Parties are interested in retaining control of the outcome.

Why Use Mediation?

As mentioned, mediation is a form of dispute resolution that encourages the people involved to talk with each other and resolve their differences themselves. The mediator helps the parties communicate but has no independent decision making authority. Mediation is one of the least expensive and least intrusive techniques available for dispute resolution. However, mediation may not be appropriate for every situation. **In fact, mediation may not be appropriate when**

- ◆ issues of law or public policy are concerned.
- ◆ either party is unwilling or unable to work toward a settlement, or,
- ◆ the case is untimely.



What Should I Expect From A Mediator?

Mediators are neutral individuals who have no relationship to either party, and no personal interest in the outcome of the dispute which they are mediating. They generally do not offer an opinion on who is right or wrong.

A mediator is expected to guide the negotiations and communication between the parties. In cases where the issues are clearly defined, the mediator may simply facilitate discussions. However, because mediators are specially trained and experienced in conflict resolution techniques, they are able to help the parties work through impaired or emotional communications, distrust, and long standing conflicts.

Mediators help parties explore creative solutions to problems, but it is the parties who agree upon the solution as the mediator does not have the power to force a decision on either party. Additionally, a mediator will not discuss private conversations with the other party or with other persons who are not participating in the mediation.

How Does The Mediation Process Work?

This brochure describes a 5-step mediation process – Preparation, Introduction, Story-telling, Problem-solving and Agreement. Each step will be described briefly.

Preparation Phase – Parties entering into mediation should prepare in advance. Each party should assess its own interests, wants, needs, and expectations before arriving at the mediation table. This will help them better understand their own case and help them communicate with the mediator and other parties. It is also a good idea to consider the other side's position in some detail.

Introduction Phase – The purpose of the introduction phase is to set a positive tone. The mediation session begins with the mediator making personal introductions, describing how the session will proceed, explaining the role of the mediator, reminding people of the confidential nature of the session, and setting up the ground rules for how people are expected to behave during the mediation.

Story-Telling Phase – The purpose of this stage of the mediation process is to allow each party to describe the factual situation from his or her perspective and to vent feelings. The mediator will deal with emotions as they arise and not let things get out-of-hand. The story-telling stage also gives each party an opportunity to listen to and really hear the other person's perspective. During this session the mediator and the parties are able to define and list the issues and focus on interests (what the real problem is and what it will take to resolve it) rather than the underlying positions (who is right or wrong).

During the story-telling phases the mediator may ask questions to clarify issues and try to get the parties to identify what they really need to have to reach a settlement.

The mediator may also use a technique called caucus to help the parties reach agreement when the story-telling has been extremely volatile or emotional and/or there seems to be no willingness to make concessions. In a caucus, the mediator meets in private one-on-one sessions to help the parties explore concessions or gather information that the parties seem unwilling to discuss in joint sessions.

Problem-Solving Phase – This phase ideally takes place with the two parties together, but may also be done in caucus sessions. The idea is to build on areas of agreement, narrow the differences between the parties, and help the parties explore, in detail, the most promising options. In mediation, the disputing parties design their own solution with the help of the mediator.

Agreement Phase – When the parties have reached an agreement to their dispute, the agreement is generally written down so that each side knows *Who* is agreeing to *What*, *When*, *Where*, and *How*. The mediator may help draft a document spelling out the terms of the agreement. These documents are reviewed by the appropriate parties and signed. Even when a mediation does not end in an agreement, it can still help the parties better understand the issues, and options for resolving the dispute.

